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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 GAURAV PATHAK, et al.,

9 Plaintiffs,

10 v.

No. C 13-1823 JSW

11 **ORDER DENYING MOTION TO
REMAND**

12 AVIS RENT A CAR SYSTEM, LLC, et al.,

13 Defendants.
14 _____ /

15 Now before the Court is Plaintiff's motion to remand based on the grounds that federal
16 law does not preempt Plaintiffs' claims. The Court finds the motion fully briefed, ripe for
17 decision, and suitable for resolution without oral argument. *See* N.D. Civ. L.R. 7-1(b).
18 Accordingly, the Court hereby VACATES the hearing set for August 23, 2013. Having
19 considered the parties' papers and the relevant legal authority, the Court DENIES Plaintiff's
20 motion to remand.

21 **BACKGROUND**

22 Between April 2008 and January 2012, Defendants Avis Rent a Car System, LLC, et al.
23 ("Defendants") employed Gaurav Pathak, et al. ("Plaintiffs") as car rental sales agents ("RSA")
24 at Avis's rental car facility located at the San Francisco International Airport. (Notice of
25 Removal, Ex. A (Complaint ("Compl."), ¶¶ 13-14).) According to Plaintiffs, Defendants,
26 through its Avis managers, subjected its male employees to ongoing discrimination on the basis
27 of their sex and gender. (*Id.* ¶ 15.) Plaintiffs allege that Defendants engaged in "a pervasive
28 pattern of differential treatment of male employees, all to their detriment, including: failure to

1 provide male employees with legally-mandated rest breaks; denial of bathroom use; selective
2 enforcement of workplace rules against only male employees; and unfavorable job
3 assignments.” (*Id.*)

4 Based on these and other allegations, on March 22, 2013, Plaintiffs filed a complaint in
5 San Francisco County Superior Court. (*Id.* at 1.) Plaintiffs asserted nine causes of action, all
6 premised on state law, for : (1) sex discrimination; (2) wrongful termination; (3) failure to
7 prevent discrimination; (4) retaliation; (5) violation of the Equal Protection Clause of the
8 California Constitution; (6) failure to provide rest periods; (7) violations of California’s Unfair
9 Competition Law; (8) sex or gender harassment; and (9) injunctive relief. (*Id.* ¶¶ 81-126.)

10 As members of the Freight Checkers, Clerical Employees and Helpers Union Local No.
11 856 (“the Union”), the Union represents and bargains on behalf of Plaintiffs all labor and
12 employment disputes. (Declaration of Monte Hill (“Hill Decl.”), ¶ 2.) Plaintiffs and the Union
13 previously entered into a Collective Bargaining Agreement (“CBA”), which Defendant
14 contends govern the terms and conditions of Plaintiff’s employment. (Notice of Removal at
15 3:10-17.) On April 22, 2013, Defendants removed the action to this Court, and asserted that
16 this Court has subject matter jurisdiction, because Section 301 of the Labor Management
17 Relations Act (“Section 301”) preempts Plaintiff’s claims relating to seniority, rest periods, pay
18 rates, attendance, discipline, discharge, and grievance conditions of RSAs. (Opp. Br. at 5:7-
19 9:25.)

20 ANALYSIS

21 A. Legal Standards Relevant to Removal Jurisdiction.

22 “[A]ny civil action brought in a State court of which the district courts of the United
23 States have original jurisdiction, may be removed by the defendant . . . to the district court of
24 the United States for the district and division embracing the place where such action is
25 pending.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983)
26 (citation omitted); *see also* 28 U.S.C. § 1441. However, federal courts exercise limited
27 jurisdiction. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).
28 Accordingly, the burden of establishing federal jurisdiction for purposes of removal rests on the

1 party seeking removal, and the removal statute must be strictly construed against removal
2 jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v.*
3 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there
4 [remains] any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566.

5 “The presence or absence of federal-question jurisdiction is governed by the ‘well-
6 pleaded complaint rule.’” *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). The well-
7 pleaded complaint rule recognizes and empowers the plaintiff as the master of his or her claim.
8 *Id.* “[H]e or she may avoid federal jurisdiction by exclusive reliance on state law.” *Id.* Thus,
9 under the well-pleaded complaint rule, federal-question jurisdiction arises where the “complaint
10 establishes either that federal law creates the cause of action or that the plaintiff’s right to relief
11 necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd.*,
12 463 U.S. at 27-28. A court cannot exercise removal jurisdiction, however, on the ground that
13 the complaint gives rise to a potential or an anticipated defense that might raise a federal
14 question, even if the defense remains the only question truly at issue in the case. *Id.* at 10, 14;
15 *see also Caterpillar*, 482 U.S. at 393.

16 While a defense of preemption, also known as “ordinary preemption,” cannot
17 demonstrate removal jurisdiction, “complete preemption,” which refers to the well-pleaded
18 complaint rule, suffices for removal. *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 344 (9th Cir.
19 1996). Under the complete preemption doctrine, certain federal statutes exert a force so
20 “extraordinary” that it “converts an ordinary state common law complaint into one stating a
21 federal claim for purposes of the well-pleaded complaint rule.” *Metro. Life Ins. Co. v. Taylor*,
22 481 U.S. 58, 66 (1987); *Rains*, 80 F.3d at 344. A cause of action arising under Section 301 of
23 the Labor Management Relations Act is controlled by federal substantive law although it may
24 have been brought in state court. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 558-562
25 (1968).

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1 **B. Section 301 Preempts The Retaliation Claim.¹**

2 Plaintiffs allege in their Complaint that Defendants, under the California Fair
3 Employment and Housing Act (“FEHA”), wrongfully retaliated and terminated Plaintiffs
4 employment. *See Cal. Gov’t Code § 12940(h)* (prohibiting employers from discriminating
5 against or discharging from employment any person that opposes forbidden practices under this
6 section). Plaintiffs argue that Section 301 does not preempt any of its claims, including its
7 wrongful termination claims.

8 “Section 301 governs claims founded directly on rights created by collective bargaining
9 agreements, and also claims substantially dependent on analysis of a collective bargaining
10 agreement.” *Caterpillar*, 482 U.S. at 394 (quoting *Electrical Workers v. Hechler*, 481 U.S. 851,
11 859, n.3 (1987)) (internal citations omitted). However, a complaint that merely consults or
12 refers to a collective bargaining agreement does not suffice; preemption only results if
13 resolution of the state-law claim requires the court to interpret the CBA. *Milne v. Employees
Ass’n v. Sun Carriers, Inc.*, 960 F.2d 1401, 1409 (9th Cir. 1991). The preemptive force of
14 Section 301 extends beyond suits that allege contract violations and also encompass suits which
15 allege breaches of duties assumed in collective bargaining agreements. *Allis-Chalmers Corp. v.
Lueck*, 471 U.S. 202, 211 (1985); *see also Burnside v. Kiewit Pacific Corp.*, 491 F.3d 1053,
16 1059 (9th Cir. 2007) (holding that Section 301 preemption will apply “even in some instances
17 in which the plaintiffs have not alleged a breach of contract in the complaint, if the plaintiffs’
18 claim is either grounded in the provisions of the labor contract or requires interpretation of it.”).

19 The *Burnside* court established a two-part inquiry to determine whether preemption
20 applies to particular claims. First, the court inquires “whether the asserted cause of action
21 involves a right conferred upon an employee by virtue of state law [and] not by a CBA.” 491
22 F.3d at 1059. If not, Section 301 preemption applies. If answered affirmatively, the Court
23 addresses the second part of the inquiry – whether the claim substantially depends on an
24 analysis of a collective bargaining agreement. If the claim does not depend on such an

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28 ¹ Because the Court finds Plaintiffs’ retaliation claims are preempted, it does not
address whether Section 301 preempts the remaining claims. The Court will exercise
supplemental jurisdiction over those claims.

1 analysis, the claim is not preempted and the plaintiff may proceed under state law. If, however,
2 the Court answers yes, the claim is preempted. *Id.* at 1059-1060.

3 Defendants do not seriously dispute that Plaintiff's retaliation claim involves a right
4 conferred upon him by state law. *See Cal. Gov. Code § 12940(h).* Defendants instead argue
5 that, in order to determine whether they wrongfully retaliated and terminated the Plaintiffs, the
6 Court will be required to interpret the terms of the CBA. *See e.g., Audette v. Int'l
7 Longshoremen's and Warehousemen's Union,* 195 F.3d 1107, 1113 (9th Cir. 1999) (holding
8 that plaintiff's state discrimination and retaliation claim was preempted because it turned on
9 defendants' offer of a legitimate nondiscriminatory reason that required interpretation of the
10 collective bargaining agreement); *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399,
11 404, 407 (1988) (examining both the prima facie elements of plaintiff's retaliatory discharge
12 claim and the employer's potential defenses to determine if they required interpretation of the
13 CBA); *Burnside v. Kiewit Pacific Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007) (noting that
14 plaintiffs' state law claims are nonetheless preempted if those claims are grounded in the
15 provisions of the CBA or require interpretation of it).

16 In contrast, Plaintiffs contend that their claims are not preempted because the Plaintiffs
17 only briefly refer to the CBA by making factual references about having experienced
18 differential treatment in relation to women in their workplace. The CBA contains, in pertinent
19 part, the following provisions regarding discharge and suspension:

20 11.1 The Employer may discharge or suspend an employee for just
21 cause, but no employee shall be discharged or suspended unless a
22 written warning notice shall previously have been given to such
23 employee of a complaint against him concerning his work or
conduct except, that no such prior warning notice shall be necessary
if the use for discharge or suspension is dishonesty, drinking related
to his employment, incompetence, unbecoming conduct,
insubordination and the use or possession of drugs and/or alcohol.
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25 11.2 The complaint specified in such prior warning notice need not
concern the same type of misconduct as the cause for discharge or
suspension. No such warning notice shall remain in effect for a
period of more than nine (9) months. A copy of such warning
notice shall be sent to the Local Union involved at the time it is
given to the employee. A warning notice must be issued within ten
(10) workdays, excluding weekends and holidays, of the alleged
cause for the reprimand or within ten (10) workdays, excluding

1 weekend and holidays, of the Employer's knowledge of the cause
2 for such warning notice.

3 11.3 The Employer shall attempt to notify in writing, the affected
4 employee and the Union of a verbal warning, but in no event shall
the failure to do so on the part of the Employer violate the terms
and conditions of any portion of this Article.

5 (Hill Decl., Ex. 2 (2011 CBA § 11).)

6 Plaintiffs allege that Defendants terminated their employment because of job
7 performance problems, when Plaintiffs contend they were really retaliated against or terminated
8 due to their sex, gender, or opposition to Defendants' alleged unlawful employment practices.
9 (Notice of Removal, Ex. A (Compl., ¶ 97).) According to Plaintiffs, the dispute does not bear
10 on whether Defendants had a right under the CBA to treat male employees differently or
11 whether the Defendants violated the CBA; but rather, the issue rests with whether Defendants
12 treated Plaintiffs differently from female employees in their terms of employment. *See*
13 *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 261 (1994) (concluding that "purely factual
14 questions about an employee's conduct or an employer's conduct and motives do not require a
15 court to interpret any term of a collective-bargaining agreement."); *see also Cramer v.*
16 *Consolidated Freightways Inc.*, 255 F.3d 683, 693 (9th Cir. 2001) (holding that preemption is
17 not mandated where a defendant relies on the presence of a CBA, without demonstrating the
18 need to interpret the CBA.)

19 The Court agrees with Defendants that the issues presented here raise a dispute about
20 whether Defendants justifiably terminated Plaintiff's employment. Plaintiffs' claims turn on
21 whether Defendants properly applied and followed the discharge provisions and
22 nondiscriminatory exceptions embodied in section 11 of the CBA. For example, Defendants
23 terminated Naveed Jalal ("Jalal") for inappropriate behavior pursuant to his violation of section
24 11 of the CBA. (Hill Decl., Ex. 17 (Jalal Termination Letter).) The Court will therefore have to
25 analyze and interpret the meaning of Section 11 of the CBA (*i.e.*, dishonesty, incompetence, or
26 unbecoming conduct) to determine whether Defendants justifiably terminated Jalal's
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1 employment.² Thus, the Court finds that Plaintiffs' causes of action will substantially depend
2 on the interpretation of the CBA and are accordingly, preempted and appropriately brought
3 before this Court.

4 **CONCLUSION**

5 For the foregoing reasons, the Court DENIES Plaintiffs' motion to remand. The Court
6 HEREBY ORDERS the parties to appear for the initial case management conference set on
7 September 27, 2013 at 1:30 p.m. The parties shall submit a joint case management statement by
8 no later than September 20, 2013.

9 **IT IS SO ORDERED.**

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11 Dated: August 9, 2013


12 JEFFREY S. WHITE
13 UNITED STATES DISTRICT JUDGE

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26 ² The Court further notes that many of Plaintiffs' claims, including but not limited to,
27 requests for time off, early outs, and work assignments require substantial interpretation into
28 Section 4 of the CBA. Section 4 of the CBA pertains to seniority procedures, and naturally,
will have affected promotions, time off requests, vacation requests, and work shifts. (*See*
Hill Decl., Ex. 2 (2011 CBA § 11).) This overlap reinforces that Section 301 preempts
Plaintiffs' claims.

